STATE OF MICHIGAN

COURT OF APPEALS

FREDERICK ZIETZ and JUNE ZIETZ,

Plaintiffs-Appellants,

v

SURYA SANKARAN, M.D. and SURYA SANKARAN, M.D., P.C.,

Defendants-Appellees.

UNPUBLISHED

No. 192147
Iosco Circuit Court
LC No. 94-008925-NH

Before: Wahls, P.J., and Hood and Jansen, JJ.

JANSEN, J. (concurring in part and dissenting in part).

I concur with the majority that the trial court did not abuse its discretion in granting defendants' motion to strike plaintiffs' expert witness because the expert is not qualified to testify pursuant to MRE 702. However, I must respectfully dissent from the majority's ruling that plaintiffs did not preserve the issue of adjournment and, alternatively, that the trial court did not abuse its discretion in denying plaintiffs' motion for an adjournment to add an expert witness.

The decision whether to allow a party to add an expert witness is within the discretion of the trial court and will be reviewed for an abuse of discretion. *Tisbury v Armstrong*, 194 Mich App 19, 20; 486 NW2d 51 (1992). Likewise the ruling on a motion for a continuance is discretionary and is reviewed for an abuse of discretion. A motion for adjournment must be based on good cause, and the court, in its discretion, may grant an adjournment to promote the cause of justice. *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996).

As noted by plaintiffs in their appellate brief, much of the argument before the trial court concerned whether the pre-amended statute or the statute amended by the Tort Reform Act would apply. MCL 600.2169(1); MSA 27A.2169(1). Plaintiffs strenuously argued that the pre-amended statute applied, and this their proposed expert was qualified to testify. The trial court disagreed, finding that the expert witness was not qualified to give expert testimony in this case. Because counsel believed that the expert was qualified, when the trial court granted the motion to strike, counsel moved for an adjournment. Counsel requested a sixty-day adjournment, agreed to pay all costs involved in adding an

expert witness, and contended that there would be no prejudice to defendants. In the appellate brief, plaintiffs essentially make the same arguments as they did in the trial court. Accordingly, I cannot agree with the majority that this issue is not preserved for appellate review because the issue is given only cursory treatment and plaintiffs failed to provide this Court with any supporting authority. See, e.g., *Mallard v Hoffinger Industries, Inc*, 210 Mich App 282; 533 NW2d 1 (1995), vacated in part 451 Mich 884 (1996), on remand ___ Mich App ___; ___ NW2d ___ (Docket No. 194746, issued March 4, 1997). Plaintiffs' arguments in favor of granting the adjournment to add an expert witness were clearly made before in the trial court and are relied upon by plaintiffs in their appellate brief.

Further, I would find that the trial court did abuse its discretion in denying the motion for adjournment to add an expert witness. Plaintiffs reasonably relied on the pre-amended statute regarding the qualification of the expert witness, which is less stringent than the amended version. Moreover, plaintiffs' cause of action cannot be deemed frivolous were they received a favorable mediation evaluation in the amount of $150,000. Additionally, I agree that defendants would not be prejudiced by an adjournment because plaintiffs agreed to cover all costs associated with adding an expert witness, and plaintiffs requested only a sixty-day adjournment. Under these circumstances, the dismissal of plaintiffs' claim is too drastic and harsh. *Tisbury, supra*, p 21.

Accordingly, I would reverse the denial of plaintiffs' motion to adjourn to add an expert witness and remand to the trial court for further proceedings. It would certainly be within the trial court's discretion to set the length of the adjournment and to impose any lesser sanction, such as imposing costs and fees as a result of the adjournment.

/s/ Kathleen Jansen